



LEGAL COMMITTEE – 39TH SESSION

(Montréal, 25 – 28 June 2024)

Agenda Item 6: Other items

RESPONSIBILITY OF STATES ARISING FROM THE OBLIGATIONS CONTRACTED IN AIR SERVICES AGREEMENTS (ASAs), REGARDING THE PROVISION OF APPROPRIATE FACILITIES AND SERVICES THAT FACILITATE OPERATION OF AIRCRAFT ON THE GROUND AND IN THE AIR TO ENSURE OPERATIONAL SAFETY AND PROTECTION OF CIVIL AVIATION

(Note presented by the Bolivarian Republic of Venezuela)

SUMMARY

This Note refers to the obligation of the signatory States of the Convention on International Civil Aviation (The Convention), to provide facilities and services in accordance with the operation of aircraft intended for international civil aviation and their operation both on the ground and in air, in response to the increase in actions that are contrary to the spirit and purpose of the Convention, as well as the commitments and responsibilities acquired by States when celebrating Air Services Agreements (ASA), in which case it is essential to keep in mind that States are the holders of the air-commercial rights that are reciprocally exchanged based on the bilateral agreements that frame the air-commercial relations between them.

Considering that Article 28 of the Convention “Standardized Facilities and Services and Systems for Air Navigation”, obliges States and not service providers to guarantee the operations of civil aircraft at international airports, in this sense, they must have the services and facilities that facilitate international air navigation, an activity that in accordance with the principles contained in the Convention must be aimed at strengthening the ties of friendship between the nations and peoples of the world. Likewise, article 4 *eiusdem* commits States to not allow the use of civil aviation for purposes incompatible with the Convention, a responsibility that falls on the authorities of the countries in exercise of the principle of sovereignty contained in article 1 of the Convention. Based on these considerations, we present this Working Paper to the Assembly in the terms set forth herein.

Committee Decision: The Legal Committee is invited to take note of the matter raised and:

- a) Analyze the content of this Working Paper based on the Chicago Convention, so that it promotes and ensures respect by Contracting States for the commercial air rights of others States; and

¹ Spanish and English versions provided by the Bolivarian Republic of Venezuela.

b) Request the Council to evaluate the situation and issue the appropriate recommendations so that situations similar to the one herein presented are not repeated since they are contrary to the safe, orderly and efficient development of international civil aviation	
<i>Strategic objectives</i>	This Working Paper relates to all ICAO Strategic Objectives.
<i>Financial implications:</i>	The refusal of service providers intended to care for aircraft destined for international commercial aviation in the airport facilities of the States parties, premeditatedly hinder the correct development of international civil aviation, causing economic losses to air operators due to delays, loss of connections, passenger protection, loss of slots, increased costs in services, among other aspects.
<i>References:</i>	Chicago Convention (Doc. 7300) and Agenda Item 7 other items to be raised in Committee

1 INTRODUCTION

1.1 The Convention on International Civil Aviation (Convention) is based on a series of principles aimed at guaranteeing the safe, orderly and efficient development of international civil aviation as a tool that allows free and fair competition, that promotes and preserves friendship and the understanding between the nations and peoples of the world, reaffirming in turn that the abusive or arbitrary use of civil aviation can constitute a threat to general security, in the same way it provides that international air transport services must develop on the basis of equal opportunity.

1.2 The objectives of the International Civil Aviation Organization are the promotion of the principles of the technique of international air navigation, the development and improvement of international air transport, in order to ensure the systematic progress of international aviation, promote the arts of design and management of aircraft for peaceful purposes; full respect for the rights of contracting States to have the opportunity to operate international airlines, avoid partiality between States, guarantee the safety of flights and promote the general development of international civil aeronautics, so that no State is left behind.

1.3 The Bolivarian Republic of Venezuela, as a State party to the Convention and member of ICAO, under the firm conviction of the responsibility incurred, has demonstrated its commitment to fulfilling the obligations generated by its membership in this Organization, which has been demonstrated in the compliance it maintains in relation to the Standards and Recommended Practices (SARPs), thereby contributing to the safe, orderly and efficient development of International Civil Aviation.

1.4 The Bolivarian Republic of Venezuela acts proactively with the Organization and the States Parties, through the constant cooperation and assistance that it provides and receives reciprocally. Likewise, it guarantees and promotes the provision of international air transportation services under the standards dictated by the Organization. In this sense, the Venezuelan State, within its bilateral relations, has signed a series of Air Services Agreements and Memorandum of Understanding with others States parties, legal instruments that have been deposited with this Organization. Despite the fact that the Bolivarian Republic of Venezuela adequately complies with its international commitments and its air companies constituted and certified in accordance with the norms and standards issued by ICAO and designated according to the aforementioned agreements, they do not receive adequate treatment by certain service providers in international airports of other State parties, which has caused some of our companies to be

prevented from having timely and adequate access to the airport services necessary to guarantee operational safety and facilitate international air navigation, putting the operation at risk.

2. CONSIDERATIONS RELATED TO THE OBLIGATIONS ASSUMED BY STATES WITH THE SIGNING OF BILATERAL AGREEMENTS REGARDING INTERNATIONAL AIR TRANSPORT AND THE EFFECTS GENERATED BY NON-COMPLIANCE THEREOF

2.1 Through ASAs, commercial air rights are negotiated and exchanged, which are property of each State, in exercise of the principle of sovereignty enshrined in Article 1 of the Convention, a situation that directly excludes individuals, the latter becoming concessionaires to whom the aeronautical authorities of the signatory countries delegate the provision of services necessary to guarantee the safety of international air navigation, this in accordance with the content of article 28 of the Convention, “Standardized Facilities and Services and Systems for Air Navigation”.

2.2 The above means that once the agreement on air services in question has been signed, the Aeronautical Authorities of the States are responsible for verifying compliance with the acquired commitments. Although it is true that the facilities, services and standardized systems essential for the correct development of international air navigation can be concessioned or delegated to third parties of a private legal nature, it is no less true that the States are the ones that have acquired the responsibility and obligation to guarantee the provision of the aforementioned services. In addition to this, it is a rule in aeronautical matters that all service providers, in order to carry out the activity, require the corresponding certification, authorization and permits issued by the corresponding authorities, who, through the continuous operational safety surveillance program, are committed to ensuring that the standardized air navigation facility and systems services provided at airports are provided under the standards required by international commercial aviation, to aircraft on international flights whose operation they have previously received through the competent Aeronautical Authority, the verification and technical suitability of the operation.

2.3 In this order of ideas, it is observed that certain Member States, despite the signing of air services agreements with the Venezuelan State, at the time of implementation of the agreements reached irregularly allow private companies to deny the provision of specialized airport services to Venezuelan air operators, without considering the provisions of Article 28 of the Convention, which establishes:

“Each Contracting State undertakes so far as it may find practicable, to: (a) provide, in its territory airports, radio services, meteorological services and other air navigation facilities to facilitate international air navigation, in accordance with the standards and practices recommended or established from time to time pursuant to this Convention.”

2.4 On the basis of the previous quote, which imposes on States and not on private individuals the obligation to guarantee essential services for the development of international civil aviation under the operational safety standards required by ICAO, States are the ones that must ensure that the companies to which the essential activity for the development is delegated for the safe development of international civil aviation respond to the principles, standards and recommended practices by ICAO, since non-compliance with the content of the Convention, in addition to violating operational safety, places the countries with which they relate in inequality, thereby affecting significantly air commercial rights of the States.

2.5 The action of airport service providers to refuse to carry out the activities for which they were certified by the Aeronautical Authorities of the States, compromises the obligations of the latter to guarantee operational safety, relaxing the commitments acquired in the Air Services Agreements and put

at risk the operational safety of (Venezuelan) air operators, by limiting the scope of the commercial air rights of a Contracting State to the Convention in a discriminatory manner.

2.6 For the factual and legal reasons explained in this Working Paper, the Venezuelan State considers it pertinent that the Legal Committee analyze the stated situation and take the corresponding actions in accordance with the “Mandatory Functions of the Council” established in paragraphs j) , k) and n) of article 54 of the Convention and the “Optional Functions of the Council” contained in paragraphs c), d) and e) of article 55 *ejusdem*, so as to require in a very respectful manner that any pronouncement be done in a timely manner in order to stop this type of practice that affects the safety of international air navigation, free competition and the fair balance in the air-commercial relations of the ICAO Member States.

3. CONCLUSIONS

3.1 Based on the considerations set forth in this Working Paper, the Bolivarian Republic of Venezuela invites the Legal Committee to objectively analyze the content of this document and make the pertinent decisions aimed at clarifying the aspects exposed, which are considered of great relevance for the safe, orderly and efficient development of International Civil Aviation, in this sense States are urged to comply with the obligations assumed in air services agreements.

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